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EXAMINER

DEXTER, CLARK F

ART UNIT PAPER NUMBER

3724

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/965,834

Applicant(s)

WEXLER ET AL.

Examiner

Clark F. Dexter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) 1 and 2 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3 and 4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. The Appeal Brief filed on January 30, 2006 has been entered. However, upon further consideration, new grounds of rejection are necessary. Because the new grounds of rejection were not necessitated by applicant's response, this Office action is being made **non-final**.

Claim Rejections - 35 USC § 112, 1st paragraph

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 3-4 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The original disclosure (that is, as originally disclosed in parent application 08/285,364) does not appear to provide support for the claimed limitation "wherein replacement of the shaving aid strip is indicated ... irrespective of wear on a blade of the razor or razor cartridge" as set forth in claim 3, lines 11-12, which limitation was first submitted in the parent application as part of new claim 37 in an amendment filed April

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2, 2001. In fact, this limitation appears to contradict the original disclosure, specifically the third paragraph on page 3 of the original specification wherein it is stated:

"It would further be desirable to provide such a shaving aid in the form of a comfort strip which would change color after a certain number of uses to signal to the user that the cartridge should be replaced. The color change may take place either through selective solubility or through abrasion. Such a shaving aid would allow the user to obtain the most efficient cartridge use. It would be particularly desirable to provide a shaving aid which changes color coincidentally with the wear of the blade such that when the strip changes the blade is no longer delivering average optimum performance."
(Underlining added).

Further, the contrary is suggested in original claim 11, wherein it is stated:

"wherein said change indicating means comprises a material or a combination of materials which allows said change indicating means to withstand an environment encountered during shaving so that a user will be visually stimulated at the desired time to change to new blade." (Underlining added).

That is, the original disclosure teaches and/or suggests that the wear indication displayed by the shaving aid is or may be related to the actual wear on the razor blade. There is, however, no teaching or suggestion that the wear indication of the shaving aid and the actual wear on the blade are independent or mutually exclusive with respect to one another as suggested by the "irrespective" language in claim 3.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Doroodian-Shoja Siamak, pn 5,388,331 (hereafter “Doroodian”).

Doroodian discloses a shaving aid with every structural limitation of the claimed invention including:

a shaving aid strip (e.g., the bottom layer in Figures 3a-3j) that includes shaving aid material (e.g., polyethylene oxide, see col. 4, lines 33-36); and

a coating layer (e.g., the top layer in Figures 3a-3j) covering a portion of a top surface of the shaving aid strip,

wherein a color of the coating layer is different from a color of the shaving aid strip (e.g., see col. 3, lines 39-41),

wherein the portion of the shaving aid strip covered by the coating layer is less than an entirety of the top surface of the shaving aid strip (e.g., see Figures 3a, 3f),

wherein the coating layer is at least partially soluble in water,

wherein replacement of the shaving aid strip is indicated when the coating layer disappears due to exposure to water, abrasion, or a combination thereof, irrespective of wear on a blade of the razor or the razor cartridge (e.g., the shaving aid of Doroodian is fully capable of performing this function); and

wherein the portion of the shaving aid strip covered by the coating layer is a visible geometric pattern (e.g., see Figures 3f-3j).

Response to Arguments

6. Applicant's arguments filed January 30, 2006 have been fully considered but they are not persuasive.

In the first paragraph on page 4 of the response, applicant argues that:

“At the outset, it should be recognized that, as its title states, Doroodian is directed exclusively to a wear indicator for indicating to the user that the blade has been sufficiently worn and requires replacement. By contrast, as noted supra pp. 2-3, the present invention is directed to a shaving aid depletion indicator for indicating to the user, particularly the sensitive skin user, when the shaving aid material in the comfort strip has been depleted to the point that the user, regardless of blade wear, can no longer expect optimal comfort while shaving and should replace the razor cartridge, without regard to the actual wear on the associated blades. Thus, the focus and objective of the present invention and that of Doroodian are totally different.”

However, the Examiner respectfully disagrees with applicant's argument, and respectively submits that applicant's invention suggests the very same purpose as that of Doroodian. Specifically, as described in the rejection under 35 USC 112 above, the present invention as originally disclosed describes in the specification that:

"It would further be desirable to provide such a shaving aid in the form of a comfort strip which would change color after a certain number of uses to signal to the user that the cartridge should be replaced. The color change may take place either through selective solubility or through abrasion. Such a shaving aid would allow the user to obtain the most efficient cartridge use. It would be particularly desirable to provide a shaving aid which changes color coincidentally with the wear of the blade such that when the strip changes the blade is no longer delivering average optimum performance."
(Underlining added).

Further, a relationship between the wear indicator and blade wear is suggested in original claim 11, wherein it is stated:

"wherein said change indicating means comprises a material or a combination of materials which allows said change indicating means to withstand an environment encountered during shaving so that a user will be visually stimulated at the desired time to change to new blade." (Underlining added).

That is, the original disclosure suggests that the wear indication displayed by the shaving aid is or may be related to the actual wear on the razor blade. There is, however, no teaching or suggestion that the wear indication of the shaving aid and the actual wear on the blade are independent or mutually exclusive with respect to one another as suggested by the "irrespective" language of claim 3.

Regarding applicant's argument in the second paragraph on page 4 of the response, it is respectfully submitted that each and every limitation of claims 3-4 are present in Doroodian, and there is no structural difference (defined either explicitly as

structure of in terms of functional language) between the claimed invention and disclosure of Doroodian.

In the paragraph bridging pages 4-5 of the response, applicant argues that:

"First, Doroodian does not disclose or even suggest that his wear indicator comprises a "shaving aid strip." The term "shaving aid" or "shaving aid material" does not appear anywhere in Doroodian's specification with respect to his alleged invention. Rather the term only appears in Doroodian patent in reference to the Booth patent which Doroodian dismisses as irrelevant."

The Examiner respectfully submits that the term "shaving aid" does not clearly imply or otherwise suggest any additional structure other than that which is set forth in the body of claims 3-4. Further, applicant has not specifically stated how the subject term structurally distinguishes over Doroodian; that is, applicant has not specified what additional structure is implied by the term "shaving aid" which additional structure is present in the claimed invention but is not in Doroodian. Similarly, it is respectfully submitted that Doroodian discloses a "shaving aid strip" to the extent claimed. Again, no additional structure other than that explicitly set forth is clearly implied or otherwise suggested by the language "shaving aid strip." And again, applicant has not specified any such additional structure implied by the language "shaving aid strip" which additional structure is lacking in Doroodian.

In the second paragraph on page 5 of the response, applicant argues that

"Further, the contention of the Examiner regarding the alleged capabilities of the Doroodian wear indicator, as quoted above, is of course totally contrary to the purpose

and functions of Doroodian's disclosure which is concerned exclusively with blade wear indication."

It is respectfully submitted that applicant's position is not understood. Doroodian discloses all of the claimed structure, and the "capabilities" attributed by the Examiner to Doroodian's wear indicator are set forth in the last paragraph of claim 3 of the present invention and are clearly and specifically disclosed by Doroodian. Further, applicant's position that Doroodian's disclosure is concerned exclusively with blade wear indication is not clear since this appears to be directed to how Doroodian's device is used and applicant has not pointed out any structural difference between the claimed invention and Doroodian that is implied by such usage as a blade wear indicator. More specifically, Doroodian meets the subject limitation as follows.

Claim 3 sets forth the limitation:

"wherein replacement of the shaving aid strip is indicated when the coating layer disappears due to exposure to water, abrasion, or a combination thereof, irrespective of wear on a blade of the razor or the razor cartridge."

- Doroodian clearly sets forth a shaving aid strip to the extent claimed (e.g., the bottom layer in Figures 3a-3j that includes shaving aid material, e.g., polyethylene oxide, see col. 4, lines 33-36).
- Doroodian clearly discloses a coating layer to the extent claimed (e.g., the top layer in Figures 3a-3j covering a portion of a top surface of the shaving aid strip).
- Doroodian clearly discloses that the coating layer disappears (as clearly illustrated in Figures 3a-3e and 3f-3j), and that it disappears

due to exposure to water, abrasion, or a combination thereof (e.g., due to abrasion as described in column 3, lines 47-51).

- Finally, Doroodian discloses structure that is fully capable of meeting the limitation “irrespective of wear on a blade of the razor or the razor cartridge.” That is, the shaving aid 20 (referred to by Doroodian as a wear indicating strip 20) and the blade 16 are separately located such that the structure of Doroodian is fully capable of being used such that the shaving aid is moved along a shaver’s skin without using the blade; for example, the razor could be moved across a shaver’s skin in a direction that is opposite to the shaving direction wherein the shaver’s skin contacts the strip 20 and then passes the razor 16 with or without contacting the razor 16. Obviously, if operated in such a manner, the blade would not be used and thus would not experience wear.

Therefore, Doroodian discloses structure that is fully capable of meeting the limitation “replacement of the shaving aid strip is indicated when the coating layer disappears due to exposure to water, abrasion, or a combination thereof, irrespective of wear on a blade of the razor or the razor cartridge.”

It is emphasized that the structure of Doroodian in the example **has not been modified**. Rather, only the manner in which Doroodian’s device is used differs from the manner suggested by the disclosure thereof. In other words, the claim language **does**

not structurally distinguish the claimed invention over Doroodian, either through the explicit recitation of structure or through functional recitations that imply structure.

Regarding applicant's arguments in the paragraph bridging pages 5-6 of the response, the Examiner respectfully disagrees with applicant's position. In column 2, lines 51-53, Figures 3a-3j are described as follows:

"FIGS. 3a through 3e depict the progressive wearing away of the indicator means of the current invention, as seen from the front edge view of the indicator means, beginning with an unused blade (FIG. 3a), and then proceeding through one, two, three and four shaves (FIGS. 3b through 3e, respectively). FIG. 3f through 3j depict in top plan view the same indicator means as it is progressively worn away." (Underlining added).

It is respectfully submitted Figures 3a-3j teach and/or suggest to one having ordinary skill in the art that Figure 3f is an alternate view of Figure 3a and corresponds to Figure 3a; and similarly, Figures 3g-3j are alternate views of Figures 3b-3e, respectively, and correspond to Figures 3b-3e, respectively. The figures clearly teach two views of the indicator at specific stages of usage starting with an unused blade in Figures 3a and 3f.

Regarding the passage bridging pages 5-6 of the response, it is emphasized that the subject passage is directed to the embodiment of Figure 1 of Doroodian. In particular, this passage refers to the head becoming visible. There is no teaching of the head becoming visible in the embodiment of Figures 3a-3j. Thus, this passage is not pertinent to the present rejection.

Regarding the passage in the second paragraph on page 6 of the response, this passage describes the structure of the embodiment of Figures 3a-3j and does not appear to provide any evidence to support applicant's position.

Regarding the passage in the third paragraph on page 6 of the response, this passage describes an alternate structure that consists of a single strip. However, this passage is not directed to the prior art rejection which is directed to the two-layer embodiment of Figures 3a-3j.

In the fourth paragraph on page 6 of the response, applicant argues that:

"All the embodiments described and illustrated in Figures 3 through 7 of Doroodian are thus concerned with a 2-layer structure where the top upper layer of one color completely covers the lower layer of a different color."

However, it is respectfully submitted that applicant has provided no evidence to support such a position. It is emphasized that Doroodian is being relied upon for what it teaches and/or suggests to one having ordinary skill in the art. Clearly, Doroodian teaches or suggests a two-layer structure wherein a portion of each layer is visible in the unused condition as shown in Figures 3a and 3f; that is, a coating layer covering less than the entirety of the top surface of the shaving aid strip.


Regarding the third paragraph on page 7 and the paragraph bridging pages 7-8 of the response, it is respectfully submitted that there is nothing in the claims which define the indicator as either a single point indicator or a progressive indicator. Thus, it is respectfully submitted that this argument is moot.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark F. Dexter whose telephone number is (571)272-4505. The examiner can normally be reached on Mondays, Tuesdays, Thursdays and Fridays.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on (571)272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Clark F. Dexter
Primary Examiner
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cf
April 10, 2006



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